

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman RICKEY L. COOK JR.
United States Air Force**

ACM S32102

25 March 2013

Sentence adjudged 13 September 2012 by SPCM convened at Travis Air Force Base, California. Military Judge: William Muldoon (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, and reduction to E-1.

Appellate Counsel for the Appellant: Captain Zaven T. Saroyan.

Appellate Counsel for the United States: Colonel Don M. Christensen.

Before

STONE, GREGORY and HARNEY
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A special court-martial composed of military judge alone convicted the appellant, in accordance with his pleas, of three specification of divers wrongful uses of marijuana, MDMA, and psilocybin mushrooms, and one specification of wrongful use of spice, in violation of Article 112a, and 134, UCMJ, 10 U.S.C. §§ 934. The court-martial sentenced the appellant to a bad-conduct discharge, confinement for 5 months, and reduction to the grade of E-1. A pretrial agreement capped confinement at 4 months with no other limitations on sentence, and the parties agreed that, under the agreement, the convening authority could approve the sentence adjudged except for confinement in excess of 4 months.

The Action of the convening authority does not explicitly approve the adjudged bad-conduct discharge, but exempts a bad-conduct discharge from execution: “[O]nly so much of the sentence as provides for reduction to the grade of E-1 and confinement for four months is approved and, *except for the bad-conduct discharge*, will be executed.” (Emphasis added.). The court-martial promulgating order mirrors the language in the Action. Such clerical errors show a lack of attention to detail but do not make the Action ambiguous where the surrounding documentation is sufficient to interpret an otherwise unclear Action. *Compare United States v. Politte*, 63 M.J. 24, 26 (C.A.A.F. 2006) (setting aside an ambiguous Action, while acknowledging that, at times, an unclear Action can be reasonably interpreted in light of adequate surrounding documentation), *with United States v. Loft*, 10 M.J. 266, 267-68 (C.M.A. 1981) (Although the convening authority did not expressly approve a bad-conduct discharge, his action in suspending it shows that approval of a bad-conduct discharge is the only reasonable interpretation.).

The surrounding documentation in the present case clearly shows the convening authority’s intent to approve a bad-conduct discharge: the pretrial agreement permits approval of a punitive discharge, the parties agreed that the convening authority could approve the adjudged bad-conduct discharge, and the staff judge advocate recommended that the convening authority approve the bad-conduct discharge. Further, the Action itself excludes a bad-conduct discharge from the order executing the approved sentence – an exclusion that makes no sense if a bad-conduct discharge was not part of the approved sentence. As in *Loft*, we find that the only reasonable interpretation of the convening authority’s Action is approval of a bad-conduct discharge, confinement for 4 months, and reduction to the grade of E-1.* To avoid these recurring clerical errors, staff judge advocates should consult the advice of our superior court. *See Politte*, 63 MJ at 26.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

* To correct these clerical errors, we direct the convening authority to withdraw the original Action and substitute a corrected Action. Rule for Courts-Martial (R.C.M.) 1107(g). We also direct publication of a corrected promulgating order. R.C.M. 1114; Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 10.10 (25 October 2012).

Accordingly, the findings and the sentence are

AFFIRMED.



FOR THE COURT

STEVEN LUCAS
Clerk of the Court